

AS

<b>Notice of Allowability</b>	Application No.	Applicant(s)	
	10/047,226	BROWN, PAUL	
	Examiner	Art Unit	
	Steven D. Maki	1733	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--**

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 12-22-03 and 11-7-03.
2. ☒ The allowed claim(s) is/are 15-26.
3. ☒ The drawings filed on 14 January 2002 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
6. ☐ CORRECTED DRAWINGS ( as "replacement sheets" ) must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948 ) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.

Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

- |   |   |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892)  | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)           |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                | 6. <input type="checkbox"/> Interview Summary (PTO-413),<br>Paper No./Mail Date _____ |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),<br>Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment                   |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit<br>of Biological Material          | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance  |
|   | 9. <input type="checkbox"/> Other _____   |

### Examiner's Amendment

1) An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

This application is in condition for allowance except for the presence of claims 1-14 to Group I non-elected without traverse (see response filed 12-2-02). Accordingly, claims 1-14 been cancelled. See MPEP 821.02.

In the specification:

on the last line of page 1 first full paragraph (see page 2 of response filed 4-21-03): change "U.S. Serial No. 10/101,581, filed November 13, 2001" to --U.S. Serial No. 10/010,581, filed November 13, 2001, now U.S. Patent 6,610,138--. This change corrects an obvious error (i.e. by changing 10/101,581 to 10/010,581) and updates the status of 10/010,581. See MPEP 1302.04.

### Reasons for Allowance

2) The following is an examiner's statement of reasons for allowance and is presented in order to clarify the record:

The terminal disclaimer filed 11-7-03, which has been received, is proper. Accordingly, the obvious type double patenting rejection set forth in the last office action dated 7-2-03 has been withdrawn.

Claims 15-26 are allowed over the prior art of record in view of (1) applicant's arguments filed 4-21-03 and (2) the examiner's comments in paragraph 9 of the last office action dated 7-2-03.

As to the changes in the specification filed 4-21-03, the change of " $n = 0$  to 18" to " $n = 0$  to 24" in the sixth and seventh paragraphs on page 3 of the specification is reasonably conveyed by the original disclosure (i.e. is not new matter). See the express description of " $n = 0$  to 24" at page 9 lines 9-17 and page 12 lines 8-12.

As to claim 15, the subject matter of "but when Me(II) is Ca,  $R_2$  is not  $Al_2$ " (which is mere deletion of an unpatentable member of a Markush group to retreat to a new Markush group) is reasonably conveyed by the original disclosure (i.e. is not new matter). See original disclosure at page 3 line 27 to page 4 line 2, page 8 lines 26-27, page 9 lines 9-17, page 12 lines 8-12 and original claim 26.

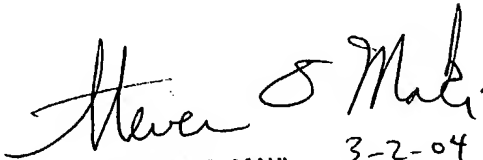
Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

3) Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven D. Maki whose telephone number is (571) 272-1221. The examiner can normally be reached on Mon. - Fri. 7:30 AM - 4:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard Crispino can be reached on (571) 272-1226. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Steven D. Maki  
March 2, 2004

  
STEVEN D. MAKI  
PRIMARY EXAMINER  
~~GROUP 1300~~  
AV 1733  
3-2-04